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Attorney for *Amicus Curiae* ACT | The App Association

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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|------------------------------------|---|
| INTEL CORPORATION, APPLE INC., |) Case No. 3:19-cv-07651-EMC |
| Plaintiffs, |) |
| v. |) NOTICE OF MOTION AND MOTION OF |
| |) ACT THE APP ASSOCIATION FOR |
| |) LEAVE TO FILE AN AMICUS CURIAE |
| FORTRESS INVESTMENT GROUP |) BRIEF IN SUPPORT OF INTEL AND |
| LLC, FORTRESS CREDIT UNION CO. |) APPLE RESPECTING DEFENDANTS' |
| LLC, UNILOC 2017 LLC, UNILOC USA, |) MOTION TO DISMISS |
| INC., UNILOC LUXEMBOURG |) |
| S.A.R.L., VLSI TECHNOLOGY LLC, |) |
| INVT SPE LLC, INVENTERGY |) |
| GLOBAL INC., DSS TECHNOLOGY |) |
| MANAGEMENT, INC., IXI IP, LLC, and |) Date: December 17, 2020 |
| SEVEN NETWORKS, LLC, |) Time: 1:30 p.m. |
| Defendants. |) Place: Courtroom 5 |
| |) Judge: The Hon. Edward M. Chen |
| |) |
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| |) |

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT ACT | The App Association (“ACT”)
 3 respectfully requests leave to participate in this action as *amicus curiae* in support
 4 of the Intel Corporation (“Intel”) and Apple Inc. (“Apple”) respecting Fortress
 5 Investment Group LLC, Fortress Credit Co. LLC, Uniloc 2017 LLC, Uniloc USA,
 6 Inc., Uniloc Luxembourg S.A.R.L., VSLI Technology LLC, INVT SPE LLC,
 7 Inventergy Global, Inc., DSS Technology Management, Inc., IXI IP LLC, and
 8 Seven Networks LLC (“Fortress IP”)’s Motion to Dismiss Intel and Apple’s
 9 Complaint for a Demanded Jury Trial (August 4, 2020) [ECF Docket Entry 192].
 10 *Amicus* requests leave to help explain how the Court’s resolution of the issues
 11 raised may impact small business innovators during critical stages of developing
 12 new technologies for the Internet of Things (IoT).

13
 14 **I. STANDARD FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

15 “[A] district court has broad discretion to appoint *amici curiae*.” *Hoptowit*
 16 *v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). “‘There are no strict prerequisites
 17 that must be established prior to qualifying for *amicus* status although an
 18 individual or organization seeking to participate as *amicus curiae* must make a
 19 showing that his participation is useful to or otherwise desirable to the court.’”
 20 *Infineon Techs. N. Am. Corp. v. Mosaid Techs., Inc.*, No. C 02-5772 JF(RS), 2006
 21 WL 3050849, at *3 (N.D. Cal. Oct. 23, 2006) (citations omitted). “An *amicus*
 22 brief should normally be allowed” when, among other considerations, “the *amicus*
 23 has unique information or perspective that can help the court beyond the help that
 24 the lawyers for the parties are able to provide.” *Cnty. Ass’n for Restoration of the*
 25 *Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash.
 26 1999) (citation omitted). “District courts frequently welcome *amicus* briefs from
 27 non-parties concerning legal issues that have potential ramifications beyond the
 28

1 parties directly involved[.]” *Sonoma Falls Developers, LLC v. Nevada Gold &*
2 *Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003).

3 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE***

4 ACT | The App Association (formerly known as the Association for
5 Competitive Technology) is an international grassroots advocacy and education
6 organization representing more than 5,000 small and mid-size app developers and
7 information technology firms. It is the only organization focused on the needs of
8 small business innovators from around the world. ACT advocates for an
9 environment that inspires and rewards innovation while providing resources to
10 help its members leverage their intellectual assets to raise capital, create jobs, and
11 continue innovating. To this end, ACT has been closely monitoring recent
12 developments in this case because of the significant implications for the interests
13 of its members. In light of the critical role that technological innovation plays in
14 enhancing competition and improving the welfare of consumers, ACT has a
15 special interest in ensuring that federal law is properly applied to dynamic
16 industries and innovative technologies.

17 ACT has participated as *amicus curiae* in a number of cases involving
18 technological innovation. *See, e.g., FTC v. Qualcomm*, No. 19-16122 (9th Cir.);
19 *Apple, Inc. v. Pepper*, 139 S. Ct. 1514 (2019); *TC Heartland LLC v. Kraft Foods*
20 *Group Brands LLC*, 137 S. Ct. 1549 (2017); *Samsung Electronics Co. v. Apple*,
21 No. 15-777 136 S. Ct. 1453 (2016) ; *United States v. Apple, Inc.*, 136 S. Ct. 1376
22 (2016) (cert. denied); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962
23 (2014); *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003);
24 *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (en banc) (per
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28

1 curiam).

2 **III. AMICUS CURIAE’S EXPERTISE WILL BENEFIT THE COURT**

3 Based on its strong interest in fostering innovation and protecting the interests of
4 app developers and information technology firms, ACT believes that its perspective
5 will aid this Court in evaluating the motion filed by Fortress IP. Intel and Apple’s
6 Complaint pleads causes of action arising from Fortress IP’s unique patent
7 aggregation scheme that creates an unfair licensing negotiation ecosystem by
8 packaging strong and weak patents together to charge unreasonable licensing rates.
9 If true, the detrimental effects of these actions will be especially felt by small
10 businesses lacking adequate resources to defend themselves. ACT has substantial
11 knowledge and a unique perspective about these implications and submits that its
12 participation as an *amicus* would assist the Court in assessing the “potential
13 ramifications beyond the parties directly involved.” *Sonoma Falls Developers*, 272
14 F. Supp. 2d at 925. Specifically, ACT is well positioned to highlight the predicted
15 substantial impact like that alleged in the Complaint by Fortress IP would have on
16 small business software developers and technology firms across an array of critical
17 industries.

18 **IV. CONCLUSION**

19 Accordingly, ACT respectfully requests that the Court grant this Motion for
20 Leave to Participate as *amicus curiae*, and to file the accompanying Brief in
21 Opposition of Fortress IP’s Motion to Dismiss the Intel Corporation and Apple,
22 Inc.’s Complaint for a Jury Trial.

23 ACT brings this motion after conferring with Counsel for both Intel and
24 Apple who each indicated that they do not oppose the filing of the instant motion
25 and brief. Additionally, ACT also contacted Counsel for all named Defendants in
26 this case. Counsel for one Defendant requested to see ACT’s *amicus* before it was
27 final, which we declined to provide; no other Counsel for named Defendants
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1 responded to our request for consent. ACT has not received notice from any
2 Defendant that they intend to oppose ACT's request to submit an *amicus curiae*.

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4 Respectfully submitted

5 Dated: October 27, 2020

ACT | The App Association
Brian Scarpelli

6
7 By: Brian Scarpelli

8 Brian Scarpelli
9 Attorney for *Amicus Curiae*
10 ACT | The App Association
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